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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2013 Grand Jury

UNITED STATES OF AMERICA,

CR No. 13-0733

Plaintiff,

I N D I C T M E N T

v.

TOBY G. SCAMMELL,

[18 U.S.C. § 1348: Securities Fraud; 18 U.S.C. § 1343: Wire Fraud; 18 U.S.C. § 2: Aiding and Abetting and Causing an Act to be Done]

Defendant.

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §§ 1348, 2]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1. Marvel Entertainment, Inc. ("Marvel"), was a character-based entertainment company with its headquarters located in New York, New York. The common stock of Marvel was registered with the Securities and Exchange Commission ("SEC") under Section 12(b) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. § 78l. The common stock of Marvel was listed on the New York Stock Exchange under the ticker symbol "MVL."

Sac

1           2.     The Walt Disney Company ("Disney") was a diversified  
2 entertainment company with its headquarters located in Burbank,  
3 California, within the Central District of California. The  
4 common stock of Disney was registered with the SEC under Section  
5 12(b) of the '34 Act. The common stock of Disney was listed on  
6 the New York Stock Exchange under the ticker symbol "DIS." On  
7 Monday, August 31, 2009, prior to the 9:30 a.m. (EST) opening of  
8 stock markets in the United States, Disney and Marvel publicly  
9 announced an agreement for Disney to acquire Marvel for cash and  
10 Disney stock equal to \$50 per Marvel share.

11           3.     Defendant TOBY G. SCAMMELL ("SCAMMELL") resided in Los  
12 Angeles, California, within the Central District of California.  
13 Defendant SCAMMELL was employed as an associate consultant at an  
14 international management consulting company with offices located  
15 in Los Angeles, California ("Consulting Co."), within the  
16 Central District of California. On or about August 2, 2009,  
17 defendant SCAMMELL moved to San Francisco, California. On or  
18 about August 3, 2009, defendant SCAMMELL began a new job as an  
19 associate with a private investment management company in Menlo  
20 Park, California.

21           4.     J.E.R. resided in Los Angeles, California, within the  
22 Central District of California. J.E.R. was an associate  
23 consultant at Consulting Co. in Los Angeles, California, and was  
24 romantically involved with defendant SCAMMELL in 2008 and 2009.  
25 In or about June 2009, J.E.R. took a leave of absence from  
26 Consulting Co. to begin a six-month externship at Disney in  
27 Disney's corporate strategy department. During her externship  
28 with Disney, J.E.R. owed a duty of trust and confidence to

1 Disney, which included an obligation to maintain as confidential  
2 material non-public information that J.E.R. learned through her  
3 externship. Defendant SCAMMELL resided with J.E.R. in Los  
4 Angeles, California, from on or about July 15, 2009, to on or  
5 about August 1, 2009. Defendant SCAMMELL used the Blackberry  
6 cellular telephone of J.E.R. on occasion and had the password to  
7 unlock the device.

8 5. O.S. was the brother of defendant SCAMMELL.

9 6. A call option is an agreement that gives the investor  
10 the right, but not the obligation, to buy a stock, bond,  
11 commodity, or other instrument at a specified price, known as  
12 the "strike price," within a specific time period. One Marvel  
13 call option contract conferred the investor the right to  
14 purchase 100 shares of Marvel common stock at the specified  
15 strike price.

16 7. Options related to Marvel common stock were listed and  
17 traded on the International Securities Exchange based in New  
18 York, New York, the NASDAQ OMX PHLX Exchange based in  
19 Philadelphia, Pennsylvania, and the Chicago Board Options  
20 Exchange based in Chicago, Illinois, among others.

21 B. SCHEME TO DEFRAUD

22 8. Beginning in or about June 2009, and continuing until  
23 in or about October 2009, in Los Angeles County, within the  
24 Central District of California, and elsewhere, defendant  
25 SCAMMELL, knowingly and with intent to defraud, devised,  
26 participated in, and executed a scheme to defraud a person in  
27 connection with his purchases, and attempted purchases, of  
28 options to purchase Marvel common stock ("Marvel call options"),

1 as to material matters, and to obtain money and property in  
2 connection with his purchases, and attempted purchases, of  
3 Marvel call options by means of material false and fraudulent  
4 pretenses, representations, and promises, and the concealment of  
5 material facts. Specifically, defendant SCAMMELL knowingly  
6 obtained, possessed, and misappropriated material non-public  
7 information that was the property of Disney and held in trust  
8 and confidence by J.E.R., which information related to Disney's  
9 planned acquisition of Marvel, and used the material non-public  
10 information for his own personal benefit and profit to purchase  
11 Marvel call options prior to the August 31, 2009, public  
12 announcement of the acquisition, all in breach of his  
13 relationship and duty of trust and confidence with J.E.R. The  
14 announcement of Disney's acquisition of Marvel resulted in a one  
15 day stock price increase of over 25% from \$38.65 at the close of  
16 the market on Friday, August 28, 2009, to \$48.37 at the close of  
17 the market on August 31, 2009.

18 9. The scheme to defraud operated, in substance, as  
19 follows:

20 a. Defendant SCAMMELL obtained, possessed,  
21 misappropriated, and misused the following material non-public  
22 information from J.E.R. related to Disney:

23 (1) that Disney planned an acquisition "that  
24 people would recognize right away" and that the transaction  
25 would close within three months;

26 (2) that Disney planned to acquire Marvel and was  
27 expending resources, including the time of J.E.R. and others in  
28

1 the corporate strategy department at Disney, toward the planned  
2 acquisition of Marvel;

3 (3) that individuals in the Disney corporate  
4 strategy department, including J.E.R., expected the acquisition  
5 of Marvel to reach agreement and announcement no later than the  
6 Labor Day weekend of September 5 to 7, 2009; and

7 (4) that Disney would pay the equivalent of  
8 approximately \$50 per Marvel share to acquire Marvel.

9 b. After defendant SCAMMELL moved to San Francisco,  
10 California, on or about August 2, 2009, defendant SCAMMELL and  
11 J.E.R. continued to communicate almost daily via telephone,  
12 email, and in-person visits in Los Angeles, California, during  
13 which defendant SCAMMELL obtained additional information about  
14 J.E.R.'s work in the corporate strategy department of Disney,  
15 and on the acquisition of Marvel.

16 c. While in possession of the material non-public  
17 information described above, defendant SCAMMELL misappropriated  
18 and misused the material non-public information to conduct  
19 research on the Internet to obtain additional information in  
20 furtherance of the scheme to defraud, including Internet  
21 searches related to the following subject matters, among others:

- 22 (1) Marvel and its stock and options prices;
- 23 (2) Disney and its stock price;
- 24 (3) Marvel and Disney executives;
- 25 (4) options and options trading strategies;
- 26 (5) insider trading;
- 27 (6) material non-public information;
- 28 (7) Mark Cuban and insider trading allegations

1 against Mark Cuban by the Securities and Exchange Commission;  
2 and

3 (8) the case United States v. O'Hagan, a Supreme  
4 Court decision concerning the misappropriation theory of insider  
5 trading in the context of a tender offer.

6 d. Defendant SCAMMELL possessed, misappropriated,  
7 and misused the above-described material non-public information  
8 for his own personal benefit to place 29 orders to purchase  
9 Marvel call options in his own individual retirement account  
10 number x2931 at TD Ameritrade, Inc. ("Ameritrade"), and in the  
11 Ameritrade account number x4989 of his brother, O.S. All but 2  
12 of the 29 orders to purchase Marvel call options had strike  
13 prices of \$40 and \$45 per Marvel share. The two remaining  
14 orders had strike prices of \$50. Further, 23 of the 29 orders  
15 had expiration dates of September 19, 2009, that is, within  
16 three to five weeks of the date the orders were placed. In  
17 total, defendant SCAMMELL purchased 647 Marvel call options with  
18 strike prices of \$45 and \$50 per share, and 12 Marvel call  
19 options with a strike price of \$40 per share. The 659 Marvel  
20 call options purchased by defendant SCAMMELL cost a total of  
21 \$5,465. Prior to August 2009, defendant SCAMMELL had never  
22 invested in the stock of Marvel or Disney; had purchased options  
23 contracts only one time in April 2008, and lost most of the  
24 investment; and had not purchased any securities in several  
25 months.

26 e. From on or about August 1, 2009, to on or about  
27 August 28, 2009, the market closing price of Marvel's common  
28

1 stock ranged from an all-time high of \$40.41 per share on August  
2 3, 2009, to a low of \$37.66 per share on August 19, 2009.

3 f. While defendant SCAMMELL concealed his purchases  
4 of Marvel call options from J.E.R. and Disney, from his brother  
5 O.S., and from his employer, defendant SCAMMELL used the  
6 material non-public information related to Disney's planned  
7 acquisition of Marvel to gain market advantage over the counter  
8 parties from whom defendant SCAMMELL purchased the Marvel call  
9 options.

10 g. After the public announcement of Disney's  
11 acquisition of Marvel, on or about August 31, 2009, defendant  
12 SCAMMELL placed orders to sell all of the Marvel call options in  
13 his Ameritrade account, and in the account of his brother, O.S.,  
14 and thereby realized a profit of approximately \$192,497, a  
15 return of over 3,000 percent on the \$5,465 investment.

16 h. Defendant SCAMMELL concealed proceeds from the  
17 sale of Marvel call options from his brother, O.S., by opening a  
18 second account at Ameritrade, number x8443 in the name of O.S.,  
19 which was not linked to a financial management tool that  
20 provided O.S. with email summaries of his financial account  
21 balances and transactions. Defendant SCAMMELL then transferred  
22 \$100,000 of proceeds from the sale of Marvel call options in  
23 Ameritrade account number x4989 of O.S. to the new Ameritrade  
24 account number x8443. Defendant SCAMMELL thereafter diverted  
25 approximately \$80,000 of proceeds from the sale of Marvel call  
26 options in the accounts of O.S. to defendant SCAMMELL.

1           10. The scheme to defraud further operated, in substance,  
2 as follows:

3           a. On or about June 30, 2009, J.E.R. attended a  
4 meeting at Disney in which she learned that Disney planned to  
5 acquire Marvel. That same day, defendant SCAMMELL, who was on  
6 vacation in Africa at the time, received an email from J.E.R. in  
7 which J.E.R. told defendant SCAMMELL about an opportunity she  
8 had to work on the Marvel acquisition project at Disney, without  
9 mentioning Marvel by name. Later that same day, defendant  
10 SCAMMELL received another email from J.E.R. in which defendant  
11 SCAMMELL learned that J.E.R. had not been selected to work on  
12 the acquisition project because, in part, "the deal is too big  
13 for my first gig." Defendant SCAMMELL also had telephone  
14 conversations with J.E.R. regarding the subject matter of the  
15 June 30, 2009, emails.

16           b. On or about July 9, 2009, defendant SCAMMELL  
17 returned to Los Angeles, California, from his vacation in Africa  
18 and soon thereafter moved into the apartment of J.E.R.

19           c. On or about July 13, 2009, defendant SCAMMELL  
20 performed three Internet searches on Yahoo! Finance related to  
21 Marvel stock.

22           d. On or about July 22, 2009, defendant SCAMMELL  
23 performed one Internet search for "MVL" and reviewed Marvel's  
24 stock price on Google Finance.

25           e. On or about July 23, 2009, defendant SCAMMELL  
26 performed Internet searches for "Disney investor relations,"  
27 "Marvel Disney," and "Marvel Disney acquisition."  
28

1 f. On or about July 24, 2009, defendant SCAMMELL  
2 received a text message from J.E.R. in which defendant SCAMMELL  
3 learned that J.E.R. had been assigned by her Disney supervisors  
4 to work on "the big project." The tasks assigned to J.E.R.  
5 included analysis of Marvel's superhero characters and  
6 compensation analysis of Marvel executives, including Marvel  
7 Chief Executive Officer "I.P."

8 g. On or about July 28, 2009, defendant SCAMMELL  
9 transferred \$2,000 from the Wells Fargo Bank account number  
10 x5169 of O.S. to the Ameritrade account number x4989 of O.S. in  
11 preparation to purchase Marvel call options.

12 h. On or about August 3, 2009, Disney's Chief  
13 Financial Officer ("CFO"), T.S., communicated to Marvel's  
14 management an acquisition price of \$50 per Marvel share. On or  
15 about August 4, 2009, Marvel's management informed Disney CFO  
16 T.S. that a deal at \$50 per Marvel share was possible and the  
17 two companies continued working to effect the transaction.

18 i. On or about the morning of August 4, 2009, Marvel  
19 issued a press release and disclosed its earnings for the period  
20 ending June 30, 2009, in which the company reported net income  
21 and revenue down approximately 38 percent and 26 percent,  
22 respectively, from the same period in 2008. Marvel also  
23 modified the lower-end of its forecasted revenue and earnings  
24 ranges for the year 2009 from \$450 million to \$465 million in  
25 revenue and from \$95 million to \$105 million in income. That  
26 same day, Marvel's stock price closed at \$40.05 per share, down  
27 from \$40.41 or -.89 percent from the prior day, and continued to  
28 trend down to \$37.75 per share by August 19, 2009.

1           j. On or about August 4, 2009, J.E.R. and her  
2 colleagues in the corporate strategy department at Disney  
3 attended a dinner at BOA Steakhouse in West Hollywood,  
4 California, hosted by Disney CFO T.S. That evening, at  
5 approximately 10:33 p.m., defendant SCAMMELL had a telephone  
6 conversation with J.E.R. that lasted approximately 16 minutes  
7 and 12 seconds.

8           k. On or about the evening of August 4, 2009, while  
9 on the telephone with J.E.R., defendant SCAMMELL performed two  
10 Internet searches for "DIS" and the name of Disney's CFO T.S.,  
11 respectively, and reviewed Disney's stock price.

12           l. On or about August 4, 2009, the team of Disney  
13 employees working on the acquisition of Marvel, including  
14 J.E.R., expected the acquisition to close by the end of August  
15 2009. Soon thereafter, defendant SCAMMELL and J.E.R. discussed  
16 making reservations to travel together to Michigan during the  
17 week of September 7, 2009.

18           m. On or about August 8, 2009, defendant SCAMMELL  
19 performed Internet searches for "MVL," "option calculator,"  
20 "option profit calculator," and "option strategies," and  
21 reviewed Marvel's stock price.

22           n. On or about August 11, 2009, Disney delivered a  
23 draft merger agreement to Marvel.

24           o. On or about August 11, 2009, defendant SCAMMELL  
25 performed Internet searches for "Marvel ownership," the name of  
26 Marvel's CEO, "I.P.," options trading strategies, and "401k  
27 limits," and reviewed Marvel's stock price.

1 p. On or about August 11, 2009, at approximately  
2 6:17 p.m., J.E.R. received an email with "updated materials"  
3 related to her work on the Disney acquisition of Marvel.

4 q. On or about August 11, 2009, between  
5 approximately 7:21 p.m. and 10:30 p.m., defendant SCAMMELL had  
6 five telephone conversations with J.E.R. that lasted a total of  
7 approximately 1 hour and thirty minutes. One of the telephone  
8 calls began at approximately 7:40 p.m., and lasted approximately  
9 24 minutes and 51 seconds.

10 r. On or about August 12, 2009, defendant SCAMMELL  
11 performed the following Internet searches: (i) "marvel and  
12 ownership"; (ii) "Marvel"; (iii) "call options"; (iv) "how call  
13 options work"; and (v) "marvel entertainment."

14 s. On or about August 13, 2009, defendant SCAMMELL  
15 reviewed on Yahoo! Finance Marvel's then current stock price, a  
16 five year chart of Marvel's stock price, and the prices of  
17 certain Marvel options.

18 t. On or about August 13, 2009, defendant SCAMMELL  
19 transferred \$800 from the Wells Fargo checking account number  
20 x5169 of his brother O.S. to the Ameritrade account number x4989  
21 of O.S. to cover part of defendant's SCAMMELL's purchase of 125  
22 Marvel call options with an expiration date of September 19,  
23 2009, and a strike price of \$50 per Marvel share.

24 u. On or about August 16, 2009, defendant performed  
25 the following Internet searches: (i) "insider trading"; (ii)  
26 "tender offer"; (iii) "mark cuban"; (iv) "material, non-public  
27 information"; (v) "SEC Rule 10b-5; (vi) "Williams Act"; (vii)  
28 "United States v. O'Hagan"; (viii) "call options"; and (ix) "how

1 options work," some of which searches were performed more than  
2 once that day.

3 v. On or about August 17, 2009, defendant SCAMMELL  
4 placed an order to transfer \$1,500 from his Wells Fargo account  
5 number x9505 to his Ameritrade account number x2931 to pay for  
6 his purchase of 65 Marvel call options with an expiration date  
7 of September 19, 2009, and a strike price of \$45 per Marvel  
8 share.

9 w. On or about August 21, 2009, defendant SCAMMELL  
10 and J.E.R. exchanged email messages about making airline  
11 reservations to fly to Detroit, Michigan, during the week of  
12 September 7, 2009, to attend a wedding.

13 x. From on or about August 21, 2009 to on or about  
14 August 23, 2009, defendant SCAMMELL stayed at the residence of  
15 J.E.R. in Los Angeles, California.

16 y. On or about August 23, 2009 and August 24, 2009,  
17 J.E.R. and defendant SCAMMELL made airline reservations to  
18 travel to Detroit, Michigan, on or about September 9, 2009, to  
19 attend a wedding and related events the weekend of September 11  
20 to 13, 2009.

21 z. On or about August 25, 2009, defendant SCAMMELL  
22 and J.E.R. had telephone conversations at 8:33 a.m. (1:19  
23 minutes), 11:12 a.m. (1:55 minutes), 5:47 p.m. (9 minutes), and  
24 10:23 p.m. (21 minutes).

25 aa. On or about August 25, 2009, defendant SCAMMELL  
26 performed the following Internet searches: (i) the name of  
27 Marvel's CEO "I.P."; (ii) "who owns that plane"; (iii) "I.P.  
28 plane"; (iv) "Marvel corporation air transport"; (v) "marvel

1 entertainment netjets"; and (vi) "company jets sec disclosure,"  
2 during the period from approximately 6:16 p.m. to approximately  
3 6:26 p.m.

4 bb. On or about August 26, 2009, defendant SCAMMELL  
5 placed an order to transfer \$1,200 from his Wells Fargo account  
6 number x9505 to his Ameritrade account number x2931 to pay for  
7 purchases of Marvel call options.

8 cc. On or about August 28, 2009, defendant SCAMMELL  
9 transferred \$1,000 from his Wells Fargo account number x9505 to  
10 the Wells Fargo account number x8211 of his brother, O.S., to  
11 pay for purchases of Marvel call options in the account of O.S.

12 dd. On or about August 28, 2009, the last trading day  
13 before the planned announcement of Disney's acquisition of  
14 Marvel, defendant SCAMMELL placed 15 orders to purchase Marvel  
15 call options during the period from approximately 12:30 p.m. to  
16 3:59 p.m. (EST), less than one minute before the close of the  
17 United States stock markets at 4 p.m. (EST).

18 ee. On or about August 28, 2009, defendant SCAMMELL  
19 performed Internet searches for "marvel."

20 ff. On or about August 31, 2009, at approximately  
21 6:30 a.m., defendant SCAMMELL searched for "MVL" on Yahoo!  
22 Finance.

23 gg. On or about August 31, 2009, at approximately  
24 6:33 a.m., defendant SCAMMELL performed an Internet search for  
25 "DIS."

26 hh. On or about August 31, 2009, defendant SCAMMELL  
27 transferred \$1,000 from his Wells Fargo account number x9505 to  
28

1 the Wells Fargo account number x8211 of his brother, O.S., to  
2 pay for purchases of Marvel call options in the account of O.S.

3 ii. On or about September 1, 2009, defendant SCAMMELL  
4 opened a new account at Ameritrade ending in number x8443 in the  
5 name of his brother, O.S.

6 jj. On or about September 4, 2009, defendant SCAMMELL  
7 transferred \$100,000 in proceeds from the sale of Marvel call  
8 options from the Ameritrade account number x4989 in the name of  
9 his brother, O.S., to the new Ameritrade account number x8443 of  
10 O.S., in order to conceal these proceeds and his trading  
11 activity from O.S.

12 kk. On or about September 12, 2009, defendant  
13 SCAMMELL received an email from his brother, O.S., who had  
14 received notice of a large increase in the balance of his  
15 Ameritrade account number x4989 and told defendant SCAMMELL "I'm  
16 not sure what happened." In response, defendant SCAMMELL  
17 concealed his trading of Marvel call options in the Ameritrade  
18 account of O.S. and said the amount looked "about right."

COUNT TWO

[18 U.S.C. § 1343]

11. The Grand Jury repeats, realleges, and incorporates paragraphs 1 through 10 of this Indictment as though fully set forth herein in their entirety.

12. Beginning in or about June 2009, and continuing to in or about October 2009, in Los Angeles County, within the Central District of California, and elsewhere, defendant SCAMMELL, knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud Disney and the victim counter parties to defendant SCAMMELL in his purchases, and attempted purchases, of call options to purchase shares of Marvel common stock as to material matters, and to obtain money and property from such victims by means of material false and fraudulent pretenses, representations, and promises, and the concealment of material facts.

13. The fraudulent scheme operated, in substance, in the manner described in paragraphs 8 through 10 of this Indictment.

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14. On or about July 29, 2009, within the Central District of California, and elsewhere, defendant SCAMMELL, for the purpose of executing the above-described scheme to defraud, transmitted, caused the transmission of, and aided and abetted the transmission of, the following item by means of wire and radio communication in interstate and foreign commerce: a wire transfer of \$2,000 from the Wells Fargo account number x5169 of O.S. in San Francisco, California, to the Ameritrade account number x4989 of O.S., which was effected through First National Bank of Omaha, Nebraska.

A TRUE BILL

161  
Foreperson

ANDRÉ BIROTTE JR.  
United States Attorney

  
ROBERT E. DUGDALE  
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